

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

RICHARD SMITH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil No. 5-127-P-H
	)	
PAT & JANE EMBLEMS, INC.,	)	
et al.,	)	
	)	
Defendants.	)	

**ORDER LIFTING STAY AND  
RECOMMENDED DECISION DISMISSING CASE**

This action was first filed in July 2005 by Richard Smith against Pat & Jane Emblems. (Doc. No. 1). In due course I issued a report and recommendation that the original complaint be dismissed based upon the legal arguments put forth in the defendant's motion to dismiss. (Doc. No. 19). The court adopted my recommended decision (Doc. No. 21) and in the normal course of events that would have been the end of the matter. This case has not proceeded in the normal course.

While the initial motion to dismiss was under advisement, Richard Smith filed an amended complaint. (Doc. No. 15). The new pro se complaint purported to add a new plaintiff, Aquafortis, LLC (unrepresented by counsel) and numerous additional defendants. The sole defendant who had appeared in the case, Pat & Jane Emblems, filed a motion to dismiss the amended complaint because it had been filed without leave of court while its motion to dismiss was pending and was therefore in violation of the Federal Rules of Civil Procedure. (Doc. 17). All of that occurred almost two full years

ago. Neither Richard Smith nor Aquafortis, LLC ever filed a response to the Motion to Dismiss the Amended Complaint.

On February 27, 2006, Richard Smith filed a motion to stay these proceedings, alleging that the United States District Court for the Southern District of New York had issued an injunction which prevented him from litigating this matter in Maine. Smith indicated he had appealed that injunction to the Second Circuit Court of Appeals. (Doc. No. 32). There being no objection to the motion to stay, I granted it on March 22, 2006, and required Smith to make periodic reports on the status of the appeal. (Doc. No. 33). Smith has followed my directives up until October 31, 2007, when he failed to forward the docket report from the Second Circuit. (Doc. No. 36). Based upon the procedural posture of the case, my view is that the stay should be lifted at this point in time and I hereby order that the stay is lifted.

I am also of the opinion that the Amended Complaint at Doc. No. 15 should be stricken. Smith never sought, let alone obtained, leave of this court to file an amended complaint in this case. Once the amended complaint is stricken, the court is left with the order adopting my earlier recommended decision, dismissing the action as to Pat & Jane Emblems based upon lack of personal jurisdiction. The order would become the final order in this case and the matter would therefore be closed.

### **Conclusion**

I now order that the stay previously entered in this case be lifted based upon Richard Smith's failure to provide the docket entries for the appeal allegedly pending in the Second Circuit Court of Appeals. I also recommend the court grant the Motion to Dismiss the Amended Complaint (Doc. No. 17) and order the "Amended Complaint"

(Doc. No. 15) stricken from the docket because it was filed without leave of court and because it purports to bring a new plaintiff into the case which is a corporate entity which must appear through counsel.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

November 15, 2007

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge